

Decision **DRAFT DECISION OF ALJ PATRICK** (Mailed 8/1/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Vickie Marvich and Alvin B. Colley,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendants.

Case 02-03-053
(Filed March 21, 2002)

OPINION DISMISSING COMPLAINT

1. Summary

This decision dismisses the complaint due to failure to state a claim under Public Utilities Code Section 1702.¹

2. Background

Vickie Marvich and Alvin B. Colley (Complainants) seek restitution for energy surcharges billed by Pacific Gas and Electric Company (PG&E) for the months of June 2001 through February 2002 amounting to \$2,512.62.

Complainants state that the issues to be considered are: (1) "Refund of Energy Surcharge moneys not spent towards supplemental power purchases"; (2) "double billing for same power"; (3) "retail/wholesale relationships with the

¹ All section references are to the Public Utilities Code, unless noted otherwise.

Department of Water Resources (DWR)/IOUs/ Consumers”; and, (4) “lack of oversight (*sic*) DWR purchase/sales.”

PG&E filed an answer requesting that the complaint be dismissed on the basis of the threshold issues we discuss below.

3. Discussion

A. The Complaint Fails to Comply with Section 1702’s Requirements

The complaint challenges the reasonableness of PG&E’s electric rates and surcharges by alleging that the rates PG&E charged during the contested period, June 2001 to February 2002, were too high and did not go towards paying DWR’s cost of purchasing power.

Section 1702 states its requirements for signatures on complaints challenging the reasonableness of rates:

“... No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.”

The complaint in this case does not meet the applicable signature requirements for challenging the reasonableness of PG&E’s electric rates. With the signatures of Vickie Marvich and Alvin Colley only, the complaint has fewer than the required 25 signatures from actual or prospective customers.

Moreover, Section 1702 states that a complaint may be made by any person, by written petition or complaint, “setting forth any act or thing done or

omitted to be done by any public utility ... in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.”

The complaint challenges the reasonableness of PG&E’s electric rates and electric surcharges, but does not allege any error or omission by PG&E itself apart from the unreasonableness of the electric surcharges and rates adopted by the Commission.² Therefore, the complaint should be dismissed for failure to comply with Section 1702.

**B. The Complaint Duplicates Litigation
Brought in a Separate Complaint Signed by
Complainant Colley as One of 25 Named
Complainants**

Complainant Colley was one of 25 complainants signing an earlier complaint case, (C.) 02-02-027, challenging PG&E’s rates for electric service. Except that Complainants Marvich and Colley complain about the level of their individual bill in the instant case, both cases challenge the reasonableness of approved electric rates, allege that the surcharges adopted in D.01-03-082 and implemented in electric rates in D.01-05-064 are improper, and demand refunds and rate reductions.

We conclude that the instant case is part of the earlier complaint, C.02-02-027, being separately addressed by the Commission. The Commission does not favor redundant litigation. Notwithstanding the failure to comply with

² In Decision (D.) 01-03-082, the Commission approved one-cent and an average three-cent per kilowatthour surcharges. The rate design for these surcharges was approved in D.01-05-064. The Commission granted limited rehearing of D.01-05-064 in D.01-05-064 and D.01-09-025. Therefore, the Commission has determined that PG&E’s electric rates for residential customers are, including the surcharges, lawful.

Section 1702, the instant case should also be dismissed because it is duplicative and redundant litigation.

4. Categorization of Proceeding

We need not reach the issue of whether this complaint should be categorized as ratesetting or adjudicatory. The Commission may dismiss a claim without a hearing if the Commission determines that the claim fails to state a cause of action under Section 1702. (*See, e.g., Hurley v. SBC Communications, Inc.*, [D.98-08-008] 1998 Cal. LEXIS 611, at pp. *3, *5, *7-8; *Wiltel, Inc. v. Thrify Tel. Inc.* [D.94-09-021] 1994 Cal. LEXIS 558, at pp. *3-4.)

5. Comments on Draft Decision

The draft decision of Administrative Law Judge Patrick in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure.

Findings of Fact

1. The complaint challenges the reasonableness of PG&E's current rates authorized by the Commission.
2. The complaint does not satisfy the signature requirement of Section 1702.
3. The complaint does not satisfy the requirement of Section 1702 that complainants set forth "any act or thing done or omitted to be done" by the utility complained of.

Conclusions of Law

1. Section 1702 applies to the instant complaint.
2. The complaint should be dismissed due to failure to state a claim under Section 1702, effective immediately.

O R D E R

IT IS ORDERED that:

1. Case 02-03-053 is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.